

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ANDREW E. JANES, On Behalf of Himself  
And All Others Similarly Situated,

Plaintiff,

vs.

THE BEAR STEARNS COMPANIES, INC.,  
JAMES E. CAYNE, ALAN D. SCHWARTZ,  
WARREN J. SPECTOR, SAMUEL L.  
MOLINARO, JR., ALAN C. GREENBERG,  
and JOHN and JANE DOES 1-10,

Defendants.

Civil Action: 08-CV-5489

*[additional captions follow]*

**PLAINTIFF ANDREW E. JANES' MEMORANDUM IN SUPPORT OF  
PLAINTIFFS AARON HOWARD AND SHELDEN GREENBERG'S  
MOTION TO CONSOLIDATE ERISA CASES, APPOINT INTERIM  
LEAD PLAINTIFFS AND INTERIM CO-LEAD COUNSEL, FOR  
ENTRY OF PRETRIAL ORDER NO. 1, AND IN OPPOSITION TO  
THE WEBER PLAINTIFFS' MOTION FOR CONSOLIDATION AND  
APPOINTMENT OF INTERIM COUNSEL FOR THE CLASS**

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AARON HOWARD, Individually and On  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES INC.,  
THE BEAR STEARNS COMPANIES INC.  
EXECUTIVE COMMITTEE, JAMES E.  
CAYNE, ALAN D. SCHWARTZ,  
WARREN J. SPECTOR, SAMUEL L.  
MOLINARO, JR., ALAN C. GREENBERG  
and JOHN DOES 1-10,

Defendants.

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**Civil Action: 08-CV-2804 (RWS)**

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ESTELLE WEBER, Individually And On  
Behalf Of Bear Stearns Companies Inc.  
Employee Stock Ownership Plan, And All  
Others Similarly Situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES INC.,  
CUSTODIAL TRUST COMPANY, JAMES  
E. CAYNE, ALAN D. SCHWARTZ,  
WARREN SPECTOR, SAMUEL L.  
MOLINARO, JR., ALAN C. GREENBERG  
and JOHN DOES 1-10,

Defendants.

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**Civil Action: 08-CV-2870 (RWS)**

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ANTHONY PISANO, Individually And On  
Behalf Of All Others Similarly Situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES INC.,  
JAMES CAYNE, ALAN D. SCHWARTZ,  
WARREN SPECTOR, SAMUEL L.  
MOLINARO, JR., ALAN C. GREENBERG  
and JOHN DOES 1-10,

Defendants.

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**Civil Action: 08-CV-3006 (RWS)**

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HANS MENOS, Individually And On Behalf  
Of All Others Similarly Situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES INC.,  
JAMES CAYNE, ALAN D. SCHWARTZ,  
WARREN J. SPECTOR, SAMUEL L.  
MOLINARO, JR., ALAN C. GREENBERG  
and JOHN DOES 1-10,

Defendants.

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**Civil Action: 08-CV-3035 (RWS)**

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IRA GEWIRTZ, Individually And On Behalf  
Of All Others Similarly Situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES INC.,  
JAMES CAYNE, ALAN D. SCHWARTZ,  
WARREN SPECTOR, SAMUEL L.  
MOLINARO, JR., ALAN C. GREENBERG  
and JOHN DOES 1-10,

Defendants.

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**Civil Action: 08-CV-3089 (RWS)**

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DREW V. LOUNSBURY, Individually and  
On Behalf of All Others Similarly Situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES INC.  
JAMES E. CAYNE; ALAN C.  
GREENBERG; ALAN D. SCHWARTZ;  
PAUL A. NOVELLY; FRANK T.  
NICKELL; FREDERIC V. SALERNO;  
VINCENT TESE; and JOHN AND JANE  
DOES 1-10,

Defendants.

**Civil Action: 08-CV-03326 (RWS)**

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SHELDEN GREENBERG, Individually and  
On Behalf of All Others Similarly Situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES INC.  
JAMES E. CAYNE; ALAN C.  
GREENBERG; JEFFREY MAYER;  
SAMUEL L. MOLINARO, JR., ALAN D.  
SCHWARTZ; WARREN J. SPECTOR; and  
JOHN AND JANE DOES 1-10,

Defendants.

**Civil Action: 08-CV-3334(RWS)**

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SCOTT WETTERSTEIN, Individually And  
On Behalf Of All Others Similarly Situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES INC.,  
JAMES CAYNE, ALAN D. SCHWARTZ,  
WARREN J. SPECTOR, SAMUEL L.  
MOLINARO, JR., ALAN GREENBERG,  
and JOHN AND JANE DOES 1-10,

Defendants.

**Civil Action: 08-CV-03351 (RWS)**

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RITA RUSIN, individually and on behalf of  
all others similarly situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES, INC.,  
JAMES E. CAYNE, ALAN D. SCHWARTZ,  
WARREN J. SPECTOR, SAMUEL L.  
MOLINARO, JR., ALAN C. GREENBERG,  
and JOHN AND JANE DOES 1-20,

Defendants.

Civil Action: 08-CV-3441 (RWS)

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LAWRENCE FINK, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

THE BEAR STEARNS COMPANIES, INC.,  
JAMES E. CAYNE, ALAN D. SCHWARTZ,  
WARREN J. SPECTOR, SAMUEL L.  
MOLINARO, JR., ALAN C. GREENBERG,  
and JOHN AND JANE DOES 1-20,

Defendants.

Civil Action: 08-CV-3602 (UA)

## **I. INTRODUCTION**

Counsel for Plaintiff Andrew E. Janes (“Plaintiff Janes”), Gainey & McKenna (“G&M”), respectfully submits its support for the appointment of Keller Rohrbach L.L.P. (“KR”) and Schiffrin Barroway Topaz & Kessler, LLP (“SBTK”), as Co-Lead Counsel in this litigation.

## **II. BACKGROUND**

KR and SBTK filed the Aaron Howard v. The Bear Stearns Companies, Inc., et al., No. 08-CV-2804 (RWS) (S.D.N.Y.) complaint on March 13, 2008, and the Shelden Greenberg v. The Bear Stearns Companies, Inc., et al., No. 08-CV-03334 (RWS) (S.D.N.Y.) complaint on April 3, 2008. Plaintiffs Aaron Howard and Shelden Greenberg (collectively, the “Howard Plaintiffs”) filed these actions against the fiduciaries of the The Bear Stearns Companies Inc. Employee Stock Ownership Plan, established and sponsored by The Bear Stearns Companies Inc. (“Bear Stearns” or the “Company”) for its employees.

On April 8, 2008, the Howard Plaintiffs sought an Order consolidating the above-captioned ERISA<sup>1</sup> actions because they are based on substantially the same facts and contain similar causes of action against overlapping defendants. Additionally, the Howard Plaintiffs requested that they be appointed Interim Lead Plaintiffs; that KR and SBTK be appointed Interim Co-Lead Counsel; and that the Court enter the Howard Plaintiffs’ proposed pre-trial Order. On June 18, 2008, Plaintiff Janes filed his complaint in this action.

## **III. DISCUSSION**

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<sup>1</sup> Employee Retirement Income Securities Act of 1974.

G&M is familiar with the experience and expertise of KR and SBTk in ERISA class action litigation based on its own work in the field. KR serves or has served as lead counsel in numerous similar ERISA class actions, including several in this district itself: In re WorldCom, Inc. ERISA Litigation, No. 02-4816 (S.D.N.Y.) (J. Cote); In re Global Crossing ERISA Litigation, No. 02-7453 (S.D.N.Y.) (J. Lynch); In re Polaroid ERISA Litigation, No. 03-8335 (S.D.N.Y.) (J. Pauley); and In re Marsh ERISA Litigation, No. 04-cv- 8157 (S.D.N.Y.) (J. Kram), and is widely regarded as a national leader in cases of this type.

Likewise, SBTk has substantial experience and success in this area of law. SBTk has been named lead or co-lead counsel in dozens of analogous actions across the country and within this district, including: In re AOL ERISA Litig., 02-CV-8853 (S.D.N.Y. 2007); In re Citigroup Litig., No. 03-CV-2932 (S.D.N.Y. Nov. 15, 2006); In re Global Crossing Sec. & ERISA Litig., 225 F.R.D. 436 (S.D.N.Y. 2004); In re Bristol-Myers Squibb Co. ERISA Litig., No. 02-CV-10129 (LAP) (S.D.N.Y. 2005); Koch v. Loral Space & Commc'ns Ltd., 03-CV-9729 (S.D.N.Y. Dec. 8, 2003); Wilson v. Federal Home Loan Mortgage Corp., MDL Docket No. 1584, No. 04-CV-2632 (JES) (S.D.N.Y. Apr. 7, 2004); In re Polaroid ERISA Litig., 362 F. Supp. 2d 461 (S.D.N.Y. 2005).

Accordingly, counsel for Plaintiff Janes, G&M, believes that KR and SBTk are best able to represent the interests of the class in this case as suggested by the *Manual for Complex Litigation* (4th ed. 2006) and codified in FED. R. CIV. P. 23(g).

#### IV. CONCLUSION

For the foregoing reasons, counsel for Plaintiff Janes, G&M, supports the appointment of KR and SBTk as Co-Lead Counsel in this large-scale complex ERISA class action.

Dated: July 9, 2008

Respectfully submitted,

**GAINEY & McKENNA**

By: \_\_\_\_/s/\_\_\_\_

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